

AMENDED IN SENATE AUGUST 28, 2013

AMENDED IN SENATE JULY 9, 2013

AMENDED IN SENATE JUNE 26, 2013

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1128

Introduced by Assembly Member Salas

February 22, 2013

An act to amend Section 25658 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1128, as amended, Salas. Alcoholic beverages: underage drinking.

Existing law provides that every person who sells, furnishes, gives, or causes to be sold, furnished, or given away an alcoholic beverage to a person under 21 years of age, or who purchases any alcoholic beverage for, or furnishes, gives, or gives away any alcoholic beverage to, a person under 21 years of age who thereafter consumes the alcohol and then causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

~~This bill would require that these acts be performed knowingly for the penalties to apply.~~ The bill would include in the provision regarding great bodily injury or death, described above, a person who sells any alcoholic beverage to a person under 21 years of age and would provide that a violation of the prohibition is also punishable as a felony *subject to specified penalties* where a person knew that a person to whom an alcoholic beverage was provided was under 21 years of age. ~~This~~ *The*

bill would provide for an exception from felony prosecution for a licensee or employee, agent, or representative of a licensee, unless the person had actual prior knowledge that the person to whom the alcoholic beverage was provided was under 21 years of age. By creating a new crime, ~~this~~ *the* bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25658 of the Business and Professions
2 Code is amended to read:
3 25658. (a) Except as otherwise provided in subdivision (c),
4 every person who ~~knowingly~~ sells, furnishes, gives, or causes to
5 be sold, furnished, or given away any alcoholic beverage to any
6 person under 21 years of age is guilty of a misdemeanor.
7 (b) Except as provided in Section 25667, any person under 21
8 years of age who purchases any alcoholic beverage, or any person
9 under 21 years of age who consumes any alcoholic beverage in
10 any on-sale premises, is guilty of a misdemeanor.
11 (c) (1) Any person who violates subdivision (a) by ~~knowingly~~
12 selling to, purchasing any alcoholic beverage for, or furnishing,
13 giving, or giving away any alcoholic beverage to, a person under
14 21 years of age, and the person under 21 years of age thereafter
15 consumes the alcohol and thereby proximately causes great bodily
16 injury or death to himself, herself, or any other person, is guilty
17 of either a misdemeanor or, if the person knew that the person was
18 under 21 years of age, a felony.
19 (2) A licensee or employee, agent, or representative of a licensee
20 shall not be subject to felony prosecution under this subdivision
21 for the sale, furnishing, giving, or giving away of any alcoholic
22 beverage to a person under 21 years of age unless the licensee or
23 employee, agent, or representative of the licensee had actual prior
24 knowledge that the person to whom the alcoholic beverage was
25 sold, furnished, given, or given away was under 21 years of age.

1 (d) Any on-sale licensee who knowingly permits a person under
2 21 years of age to consume any alcoholic beverage in the on-sale
3 premises, whether or not the licensee has knowledge that the person
4 is under 21 years of age, is guilty of a misdemeanor.

5 (e) (1) Except as otherwise provided in paragraph ~~(2)~~ or (2),
6 (3), *or* (4), or Section 25667, any person who violates this section
7 shall be punished by a fine of two hundred fifty dollars (\$250), no
8 part of which shall be suspended, or the person shall be required
9 to perform not less than 24 hours or more than 32 hours of
10 community service during hours when the person is not employed
11 and is not attending school, or a combination of a fine and
12 community service as determined by the court. A second or
13 subsequent violation of subdivision (b), where prosecution of the
14 previous violation was not barred pursuant to Section 25667, shall
15 be punished by a fine of not more than five hundred dollars (\$500),
16 or the person shall be required to perform not less than 36 hours
17 or more than 48 hours of community service during hours when
18 the person is not employed and is not attending school, or a
19 combination of a fine and community service as determined by
20 the court. It is the intent of the Legislature that the community
21 service requirements prescribed in this section require service at
22 an alcohol or drug treatment program or facility or at a county
23 coroner's office, if available, in the area where the violation
24 occurred or where the person resides.

25 (2) Except as provided in paragraph (3) *or* (4), any person who
26 violates subdivision (a) by furnishing an alcoholic beverage, or
27 causing an alcoholic beverage to be furnished, to a minor shall be
28 punished by a fine of one thousand dollars (\$1,000), no part of
29 which shall be suspended, and the person shall be required to
30 perform not less than 24 hours of community service during hours
31 when the person is not employed and is not attending school.

32 (3) Any person who violates subdivision (c) *as a misdemeanor*
33 shall be punished by ~~either~~ imprisonment in a county jail for a
34 minimum term of six months not to exceed one year, by a fine of
35 one thousand dollars (\$1,000), ~~by imprisonment pursuant to~~
36 ~~subdivision (h) of Section 1170 of the Penal Code for 16 months,~~
37 ~~or 2 or 3 years,~~ or by both imprisonment and fine.

38 (4) *Any person who violates subdivision (c) as a felony shall be*
39 *punished by imprisonment pursuant to subdivision (h) of Section*
40 *1170 of the Penal Code for 16 months, or 2 or 3 years, by a fine*

1 *of one thousand dollars (\$1,000), or by both imprisonment and*
2 *fine.*

3 (f) Persons under 21 years of age may be used by peace officers
4 in the enforcement of this section to apprehend licensees, or
5 employees or agents of licensees, or other persons who sell or
6 furnish alcoholic beverages to minors. Notwithstanding subdivision
7 (b), any person under 21 years of age who purchases or attempts
8 to purchase any alcoholic beverage while under the direction of a
9 peace officer is immune from prosecution for that purchase or
10 attempt to purchase an alcoholic beverage. Guidelines with respect
11 to the use of persons under 21 years of age as decoys shall be
12 adopted and published by the department in accordance with the
13 rulemaking portion of the Administrative Procedure Act (Chapter
14 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
15 Title 2 of the Government Code). Law enforcement-initiated minor
16 decoy programs in operation prior to the effective date of regulatory
17 guidelines adopted by the department shall be authorized as long
18 as the minor decoy displays to the seller of alcoholic beverages
19 the appearance of a person under 21 years of age. This subdivision
20 shall not be construed to prevent the department from taking
21 disciplinary action against a licensee who sells alcoholic beverages
22 to a minor decoy prior to the department's final adoption of
23 regulatory guidelines. After the completion of every minor decoy
24 program performed under this subdivision, the law enforcement
25 agency using the decoy shall notify licensees within 72 hours of
26 the results of the program. When the use of a minor decoy results
27 in the issuance of a citation, the notification required shall be given
28 to licensees and the department within 72 hours of the issuance of
29 the citation. A law enforcement agency may comply with this
30 requirement by leaving a written notice at the licensed premises
31 addressed to the licensee, or by mailing a notice addressed to the
32 licensee.

33 (g) The penalties imposed by this section do not preclude
34 prosecution or the imposition of penalties under any other provision
35 of law, including, but not limited to, Section 272 of the Penal Code
36 and Section 13202.5 of the Vehicle Code.

37 SEC. 2. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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